

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,)	1 CA-CR 07-1021
)	
Appellee,)	DEPARTMENT D
)	
v.)	MEMORANDUM DECISION
)	
MARY ANN TOOMEY,)	(Not for Publication -
)	Rule 111, Rules of the
Appellant.)	Arizona Supreme Court)
)	FILED 9-02-08

Appeal from the Superior Court in Maricopa County

Cause No. CR2007-103965-001 SE

The Honorable Connie Contes, Judge

AFFIRMED

Terry Goddard, Attorney General	Phoenix
By Kent E. Cattani, Chief Counsel	
Criminal Appeals Section	
Attorneys for Appellee	

James J. Haas, Maricopa County Public Defender	Phoenix
By Christopher V. Johns, Deputy Public Defender	
Attorneys for Appellant	

J O H N S E N, Judge

¶1 This appeal was timely filed in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz.

297, 451 P.2d 878 (1969), following Mary Ann Toomey's conviction on one count of possession or use of dangerous drugs, a Class 4 felony; one count of possession of drug paraphernalia, a Class 6 felony; and one count of possession or use of narcotic drugs, another Class 4 felony. Toomey's counsel has searched the record on appeal and found no arguable question of law that is not frivolous. See *Smith v. Robbins*, 528 U.S. 259 (2000); *Anders*, 386 U.S. 738; *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999). Toomey was given the opportunity to file a supplemental brief but did not do so. Counsel asks this court to search the record for fundamental error. After reviewing the entire record, we affirm Toomey's convictions and sentences.

FACTS AND PROCEDURAL HISTORY

¶2 At 1:00 a.m. on August 15, 2006, Officer David Crites approached Toomey and A.O. in a strip mall parking lot as they were walking away from the drop-off area at a second-hand store. As Crites approached, he noticed that Toomey and A.O. were walking toward a vehicle parked 50 yards away near another store. Crites identified himself and asked the women what they were doing at that location. Toomey and A.O. told Crites they were dropping items off, which seemed unusual to Crites because of how far their car was parked from the drop-off area.

¶13 Crites asked the women for proof of identification and they told him they needed to go to their vehicle. He followed them and closely monitored their actions as they looked for and produced identification. When Crites performed a warrant check on Toomey's name, he discovered she had an outstanding misdemeanor warrant. Crites arrested her and placed her in the back of his patrol car. Crites asked Toomey whether she wanted to take any of her personal belongings with her, and she indicated she wanted her purse.

¶14 Crites removed Toomey's purse from the other car, put it on the hood of his patrol car and searched it under his spotlight. Inside the purse he found a black wallet, a brown coin purse and two hydrocodone pills. When he searched the coin purse he found in it a "small clear bag containing a crystalline substance that [he] believed to be methamphetamine."

¶15 Toomey, Crites and a crime lab technician testified during the three-day trial. Crites and Toomey testified to their recollections of relevant events, and the crime lab technician testified that the drugs found were usable amounts of methamphetamines and hydrocodone. Crites also testified that the small bag containing the methamphetamines was drug paraphernalia because it was of the type "[u]sually used to contain numerous types of drugs." The jury returned guilty

verdicts on all three counts. At a subsequent sentencing hearing, the court suspended sentences on all three convictions and imposed concurrent terms of three years' probation for each.

DISCUSSION

¶16 Toomey timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031 (2001) and -4033 (2001). Upon review, we view the facts in the light most favorable to sustaining the jury's verdict and resolve all inferences against Toomey. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998).

¶17 The record reflects Toomey received a fair trial. She was represented by counsel at all stages of the proceedings against her and was present at all critical stages. Toomey arrived late on the first day of trial; however, the minute entry from that day notes that although she missed a hearing held pursuant to Arizona Rule of Criminal Procedure 609, she arrived prior to juror voir dire. *See State v. McKinney*, 185 Ariz. 567, 573, 917 P.2d 1214, 1220 (1996) (Rule 609 hearing not a critical stage of trial requiring defendant's presence), *superseded by statute on other grounds as noted in State v. Martinez*, 196 Ariz. 451, 999 P.2d 795 (2000). The court held appropriate pretrial hearings.

¶18 The State presented both direct and circumstantial evidence that taken together was sufficient to allow the jury to convict. The jury was properly comprised of eight members. The court properly instructed the jury on the elements of the charges, the State's burden of proof and the necessity of a unanimous verdict. The jury returned a unanimous verdict, which was confirmed by juror polling. The court received and considered a presentence report and imposed a legal sentence on the charges of which Toomey was convicted.

CONCLUSION

¶19 We have reviewed the entire record for reversible error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881.

¶10 After the filing of this decision, defense counsel's obligations pertaining to Toomey's representation in this appeal have ended. Defense counsel need do no more than inform Toomey of the outcome of this appeal and her future options, unless, upon review, counsel finds "an issue appropriate for submission" to the Arizona Supreme Court by petition for review. See *State*

v. Shattuck, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984).

Toomey has 30 days from the date of this decision to proceed, if she wishes, with a *pro per* petition for review.

DIANE M. JOHNSEN, Presiding Judge

CONCURRING:

JON W. THOMPSON, Judge

ANN A. SCOTT TIMMER, Judge